

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
August 17, 2007

No. 04-9003

JACK FOSTER OUTTEN, Appellant

v.

RICK KEARNEY, et al.

(D. Del. No. 98-cv-00785)

Present: RENDELL, AMBRO and FUENTES, Circuit Judges

Motion by Appellant to Enlarge Time for New Penalty Hearing which the Court may wish to construe as Motion to Recall Mandate and to Amend Decision to Allow Penalty Hearing to Commence on or before May 20, 2008.

/s/ Nicole M. Bruno
Case Manager 267-299-4924

**Opinion and judgment issued September 28, 2006.
Amended Mandate issued on January 24, 2007.
Response due August 27, 2007.**

O R D E R

The foregoing motion to enlarge the time for the penalty hearing is granted. In this Court's opinion, we "reverse[d] and remand[ed] this case to the District Court with instructions to grant a provisional writ of habeas corpus directed to the penalty phase." Outten v. Kearney, 464 F.3d 401, 423 (3d Cir. 2006). It appears from the District Court's electronic docket that the provisional writ has not yet been granted.

After Outten filed a motion for an extension of time for the resentencing hearing, we recalled the mandate and issued an amended judgment on January 24, 2007, giving the State of Delaware until November 1, 2007 to hold the resentencing hearing. Outten now seeks to extend the time for the resentencing until May 20, 2008.

The Clerk is directed to recall the amended mandate issued on January 24, 2007.

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O R D E R

We direct the District Court to enter an order granting the writ of habeas corpus with respect to Outten's death sentence conditioned on the State of Delaware's grant of a new sentencing hearing. The District Court shall set a deadline for the sentencing hearing. Any further requests for extensions of time should be directed to the District Court which may wish to allow the parties to resolve extensions of time by stipulation.

The Clerk is directed to issue an amended mandate in accordance with the above instructions.

By the Court:

/s/ Thomas L. Ambro, Circuit Judge

Dated: October 12, 2007
CMD/cc: John P. Deckers, Esq.
Ricardo Palacio, Esq.
Thomas E. Brown, Esq.